IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Bail Appl..No. 5036 of 2007()

[CRIME NO.87/2004 OF UDUMBANCHOLA EXCISE RANGE]

PETITIONER/ACCUSED:

SAJI, AGED 28 YEARS,
S/O.NARAYANAN,MADAKKATHARA HOUSE,
MANGATHOTTIKARAYIL, KANTHIPARA VILLAGE,
UDUMBANCHOLA TALUK.

BY ADV. SRI.S.DILEEP (KALLAR)

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRSENTED BY EXCISE INSPECTOR, UDUMBANCHOLA EXCISE RANGE, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. (INVESTIGATING OFFICER IN CRIME NO.87/2004 OF UDUMBANCHOLA EXCISE RANGE).

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5036 of 2007

Dated this the 20th day of August 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. Investigation is now complete. Final report has already been filed. Committal court has taken cognizance. Coercive processes have been issued against the petitioner. The petitioner finds a warrant of arrest issued by the learned Magistrate chasing him.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence earlier was not wilful. But was on account of reasons beyond his control. The petitioner is willing to surrender before the learned Magistrate and apply for bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. After the decision in Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in

a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007